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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

LENORE ANN BOYKIN,

Plaintiff and Respondent,

v.

JURUPA UNIFIED SCHOOL DISTRICT,

Defendant and Appellant.

E055914

(Super.Ct.No. RIC10019006)

OPINION

APPEAL from the Superior Court of Riverside County. Ronald L. Taylor, Judge.
(Retired Judge of the Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of
the Cal. Const.) Reversed with directions.

Fagen Friedman & Fulfroast, Christopher D. Keeler and Kerrie E. Taylor for
Defendant and Appellant.

The Law Offices of Richard D. Ackerman and Richard D. Ackerman; Lenore A.
Boykin, in pro. per., for Plaintiff and Respondent.

Defendant Jurupa Unified School District (District) appeals the judgment granting plaintiff Lenore Ann Boykin's (Boykin) petition for a writ of administrative mandamus (Code Civ. Proc., § 1094.5) seeking to reverse her termination and compel the District to reinstate her to her teaching position. We reverse.

I. PROCEDURAL BACKGROUND AND FACTS

In 1979, Boykin earned her degree in psychology from the University of California, Riverside (UCR). She later received a Ryan single subject life teaching credential for mathematics from UCR. Her credentials allowed her to teach mathematics in grades 12 and below. In 1984, Boykin earned a master's degree in educational psychology from UCR, with an emphasis in cognitive development, mental retardation and the education of persons with developmental disabilities. In 1986, Boykin was employed with the District as a mathematics teacher.

Boykin enjoyed teaching and interacting with students. She was employed at the comprehensive high schools within the District from 1985 through 2004. In 2004 she began teaching summer school at the Learning Center (Center), an alternative educational facility within the District. She requested to teach at the Center because it needed a math teacher and she liked the kids she had been working with as a summer substitute. The Center is home to several alternative educational programs, including the Steps to Educational and Personal Success Community Day School (STEPS).¹ She accepted a

¹ STEPS provides educational services for 40 to 50 middle and high school students who have been expelled from traditional school. The program's goal is the student's readmission to a traditional campus following a showing of rehabilitation.

full-time teaching position at the Center beginning in the 2004-2005 school year, where she continued until a notice of intent to dismiss was filed.

The Center's staff is composed of a principal, an assistant principal, nine full-time certificated teachers, many classroom aides, several campus supervisors, and other administrative staff. The student-to-teacher ratio is about eight to 12 students per teacher per class period, with a teacher's aide also present in the classroom. The STEPS school year is 11 months and STEPS teachers are paid on an 11-month contract. The students who attend STEPS are challenging, because most were expelled from traditional campuses for inappropriate behavior, which does not necessarily cease when the student arrives at the Center. Common misbehavior includes failing or refusing to work in the classroom, coming to class unprepared, throwing objects, talking or shouting in the classroom, refusing to sit in assigned seats, disrupting the class, tardiness, truancy, lying, failing to serve detention, demonstrating defiance toward teachers and other school officials, using profanity and directing profanity toward other students, teachers and staff, possessing objects and paraphernalia related to gang activity or graffiti, and vandalism. To be an effective teacher in the STEPS program, the teacher must be able to manage classes by directing and redirecting students who are disruptive or off task. Teachers may impose progressive discipline, contact parents, and refer students to the administration.

For Boykin's first four years at the Center, she wrote numerous student referrals that resulted in students being sent to the office.² On June 4, 2008, Principal George Monge emailed Boykin regarding the number and time-consuming consequences of her classroom referrals. The email stated, in part: "Lenore, I need to communicate with you regarding an issue that has reached a critical mass that must be corrected as soon as possible. I am speaking about the high number of referrals that you send to the office, often for minor 'offenses' that clearly should have been handled within the classroom." The email referenced research that found negative results from rigidly enforced classroom discipline programs, while noting four crucial components of an effective classroom learning environment, namely, positive teacher-student relationships, clearly stated expectations of acceptable behaviors, monitoring skills, and consequences. Monge informed Boykin that her referrals exceeded the number of referrals from the rest of the teaching staff combined, and he requested that she reconsider her classroom management plan. He was willing to assist her in making any necessary adjustments and/or providing training.

On June 16, 2008, Boykin met with Monge, Maudie Gooden, the union president, and Diane Pearson, who took notes for Boykin. Boykin was offended by the email, stating that the email made her "fe[el] like [she] had been raped and violated." (Italics omitted.) Monge provided pie charts showing that Boykin was responsible for the largest

² In her brief, Boykin acknowledges that during the 2007-2008 school year, she wrote 65 referrals that required the student to be sent to the office, and 153 referrals for the sole purpose of documentation and information that did not require the student to be sent to the office. She claims the majority of the referrals were repeat offenders.

portion of the referrals issued in each of the past academic years. Boykin dismissed the data because “statistics could be manipulated”; instead, she wanted to discuss each referral and explain its specific underlying problem. The meeting concluded with Boykin submitting a complaint to Assistant Superintendent Tamara Elzig against Monge and his secretary.

Interim Principal Dennis Kroeger was assigned to the Center shortly after the start of the 2008-2009 academic year.³ On December 9, 2008, Boykin attempted to gain the attention of a campus supervisor from the doorway of her classroom. A female student, S.V., tried to assist Boykin by whistling. Because the whistle was loud, Boykin placed her hands in the area of S.V.’s neck, between the collarbone and Adam’s apple, and pushed her away. S.V. was shocked and scared by the incident. Numerous students witnessed it. Boykin met with Elzig and was placed on administrative leave.

In January 2009, Trenton Hansen was assigned to serve as principal at the Center. Hansen believed that excessive student referrals might indicate a deficiency in a teacher’s classroom management skill, which might compromise classroom instruction. When Hansen arrived, Boykin was on administrative leave because of the incident involving S.V. Boykin returned to teach in mid-March 2009. Hansen met with her and presented her with a copy of the Notice of Unprofessional Conduct. Boykin was offered the opportunity of transferring out of the Center and receiving a Letter of Reprimand;

³ Boykin admits that during this academic year, 20 percent of her referrals required students to be sent to the office. However, from December 9, 2008, through March 16, 2009 (3 months), Boykin was on administrative leave.

however, she declined for financial reasons. Hansen discussed his expectations and provided her with a set of directives and a plan of assistance, which directed Boykin never to place her hands on a student out of anger, to conduct herself in a professional manner, and to complete an anger management program. After a few months of observing Boykin's classroom, reviewing her student referrals, and speaking with students and parents, Hansen concluded that Boykin possessed a weak classroom management style and that her number of referrals was excessive. Boykin wrote referrals for students who were defiant and argumentative after she had asked them to move; for arguing in class; not bringing assigned materials to class; using profanity; sticking a gum wrapper to a desk; possessing straightened paper clips; submitting random answers to test questions; not working in class; poor use of class time; drawing and using graffiti-style writing; copying other students' work; refusing to turn over cell phones; and for walking out of class at the end of the period without first being dismissed.

At Hansen's direction, Boykin sent emails to document instances of misconduct that did not result in a referral. Between March 18 and May 18, 2009, Boykin sent more than 40 pages of emails, requiring the expenditure of a great deal of Hansen's time and attention. On April 16, 2009, Boykin inappropriately searched the personal belongings of a male student when he was out of the classroom. On May 6, a student complained that Boykin had called her "stupid." The student was asked to move her seat and she complained that it was stupid. In response, Boykin stated, "'stupid is as stupid does.'" On May 11, a female student was helping a male student with his work when Boykin told him that if she (Boykin) were him (the male student), she would not want the female

student's help because the answers would be wrong. On May 13, Boykin told (then assistant principal) Maritza Ruano that there was a female student whom Boykin couldn't look at without feeling like throwing up. Boykin described the female student a "horrible student." On June 2, 2009, the District sent Boykin a Summary of Allegations of her wrongdoing and requested a response.

Given the repeated instances of Boykin's inappropriate behavior, on August 6, 2009, the District issued a Notice of Unsatisfactory Performance and Unprofessional Conduct. She was provided with a list of directives to follow in order to correct her unsatisfactory performance during the next 90-day period and to correct her unprofessional conduct during the next 45-day period.⁴ She was directed to maintain a strong classroom management system, develop positive student relationships, treat students respectfully, and limit the number of student referrals issued. Boykin volunteered for the peer assistance review program in September 2009 and Monica Werwee-Ritter was assigned as Boykin's representative. Boykin was asked if she was interested in attending a workshop on classroom management techniques; however, she declined because the workshop was on a Saturday and she was interested in attending "during the work week, but not on the weekend." She explained that she drives to San Diego to see her children and go to church. She was warned that if she was unable to correct her deficiencies, the District would institute disciplinary actions, including dismissal.

⁴ Boykin complains that for 34 days of the improvement period, school was not in session, and thus, she had no opportunity to work on the directives she was given.

On January 26, 2010, Boykin responded to the June 2, 2009, Summary of Allegations from the District. She claimed the District's allegations of her misconduct were untrue or unsubstantiated, and that her authority was being undermined by Ruano. Boykin was unable to correct her deficiencies, and thus, on February 19, 2010, the District issued a Notice of Intent to Dismiss and a Statement of Charges that charged Boykin with unprofessional conduct, dishonesty, unsatisfactory performance, and evident unfitness for service. On March 2, Boykin timely filed a demand for hearing before the Commission on Professional Competence (CPC). As a result, on or about March 5, 2010, the District issued a Dismissal Accusation. (Ed. Code, §§ 44930-44952, Gov. Code, §§ 11500-11529.) Boykin filed a Notice of Defense on March 19, 2010.

The CPC conducted an evidentiary hearing in June 2010. The District called 11 witnesses, including six students and five staff witnesses. Boykin called five witnesses, including one student, three coworkers, and herself. On July 26, 2010, the CPC unanimously held that cause existed under Education Code section 44932⁵ to discipline Boykin, and that the appropriate level of discipline was dismissal. Specifically, the CPC found that Boykin's unprofessional conduct "included the angry touching of [S.V.], the unauthorized search of [S.C.]'s folder, the insensitive and demeaning comments made to [B.] in the classroom in front of other students, the 'stupid is as stupid does' comment made to student [A.S.] in the classroom in front of other students, the intrusion into

⁵ Education Code section 44932, subdivision (a), authorizes dismissal for unprofessional conduct, dishonesty, unsatisfactory performance, evident unfitness for service.

[M.H.]’s personal space, the threat in the classroom to staple a student’s mouth shut, and the t[h]reat made in the classroom to throw rocks at students who were not working. In light of Ms. Boykin’s inability to control herself in the classroom despite two notices of unprofessional conduct, it is concluded that there is a likelihood that similar misconduct will reoccur, there were extenuating circumstances which did not justify or excuse such unprofessional conduct, Ms. Boykin’s misbehavior was well known to students within the Learning Center, Ms. Boykin’s unprofessional conduct impaired student-teacher relationships and disrupted the educational process, Ms. Boykin was often angry when she engaged in the unprofessional conduct, and the misconduct in issue was continuing with the last misconduct occurring shortly before Ms. Boykin was placed on administrative leave.”

As for her unsatisfactory performance, the CPC found that Boykin failed “to effectively manage her classroom and her failure to discipline students in an appropriate manner from the 2007-2008 school year through the date she was most recently placed on administrative leave. Ms. Boykin’s classroom was beset with tardiness, inattention, talking in class, disdain for discipline, disrespect, and a general unruliness. Despite the repeated attempts by several site administrators to bring these deficiencies to her attention, Ms. Boykin failed to establish an effective program of student discipline in her classroom which interfered with the educational process. Ms. Boykin’s continuous writing of student referrals and her issuing emails for relatively minor infractions did not constitute an effective classroom management strategy and, in fact, it disrupted the Learning Center’s operation. Ms. Boykin lacked the skills to handle difficult middle and

high school students and she failed to provide them with the meaningful instruction that was authorized under her credential.”

Finally, concerning her unfitness to teach, the CPC concluded that she was “unwilling or unable to respond to valid suggestions that she improve her classroom management style, that she cease writing so many student referrals, and that she focus on developing better teacher-student relationships. Ms. Boykin’s prolonged incapacity to control the classroom and interact with students in a professional manner was a result of Ms. Boykin not being fit, adapted to or suitable for teaching at the Learning Center. Ms. Boykin was impatient with and intolerant of demanding students. She resisted reasonable suggestions, turning meetings into confrontations. Ms. Boykin steadfastly maintained throughout her employment that she acted reasonably and that others were to blame for her classroom failures. This profound lack of insight established her evident unfitness of service at the Learning Center and within the district.”

Boykin initiated this action. On November 30, 2010, her Second Amended Petition for Writ of Mandate and Administrative Review was filed. By way of her petition, Boykin sought back pay, reinstatement, and reversal of the underlying administrative adjudication against her. Her primary argument focused on an alleged “lack of notice and necessary compliance with the Due Process strictures that apply to the conduct of the [District].” She did not challenge the CPC’s conclusions regarding her unprofessional conduct, unsatisfactory performance, or unfitness to teach.

The trial court heard the matter on October 28, 2011. After receiving supplemental briefing, the court convened a second hearing on December 2, 2011.

Although the court rejected the vast majority of Boykin’s contentions and legal theories, it held: “[I]n weighing all of the factors when reviewing the record when—in consideration of the additional personal circumstances, the penalty that is associated with termination which will carry with her for the rest of her life, in using the language in the *B[u]rman* case⁶ at page 219 that states as follows: ‘Although there’s some—there is cause for some discipline existed, the harsh sanction of dismissal was not warranted.’ And that’s what I believe we have here, that here was some cause for discipline[;] however, that harsh sanction of dismissal was not warranted and was much too—too serious for the circumstances that we had here.” The court added: “Yeah, she made mistakes. Yeah, this was cause to discipline her, but does that rise to the level of termination? I just have to give it my best call. And in my judgment, it does not support it.” On February 16, 2012, the court granted Boykin’s petition, and the District appealed.

II. STANDARD OF REVIEW

“Section 44945 specifies that ‘[the] decision of the [CPC] may, on petition of either the governing board or the employee, be reviewed by a court of competent jurisdiction in the same manner as a decision made by a hearing officer under Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. . . .’ Government Code section 11523 in turn states that ‘[judicial] review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure’ A proceeding in administrative mandamus commenced by

⁶ *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208 (*Burman*).)

a petition under Code of Civil Procedure section 1094.5 is the proper avenue for review of a decision rendered under [Education Code] section 44944. [Citation.]” (*Burman, supra*, 45 Cal.3d at p. 215, fn. 6.)

It is within the CPC’s discretion to determine whether dismissal of a teacher is appropriate. (*Burman, supra*, 45 Cal.3d at p. 222; *Kolter v. Commission on Professional Competence of Los Angeles Unified School Dist.* (2009) 170 Cal.App.4th 1346, 1353.)

““The penalty imposed by an administrative body will not be disturbed in mandamus proceedings unless an abuse of discretion is demonstrated. [Citations.] Neither an appellate court nor a trial court is free to substitute its discretion for that of the administrative agency concerning the degree of punishment imposed.’ [Citations.]

[¶] . . . [¶] . . . [I]n a mandamus proceeding an appellate court vis-a’-vis *the administrative agency*, does *not* independently or ‘de novo’ determine penalty. ‘[A] court cannot substitute its discretion for that of the administrative agency on the degree of punishment to be imposed.’ [Citation.]” (*Cummings v. Civil Service Com.* (1995) 40 Cal.App.4th 1643, 1652.) Rather, “[i]n reviewing the exercise of this discretion we bear in mind the principle “[c]ourts should let administrative boards and officers work out their problems with as little judicial interference as possible. . . . Such boards are vested with a high discretion and its abuse must appear very clearly before the courts will interfere. [Citations.] The “overriding consideration” in cases of public employee discipline “is the extent to which the employee’s conduct resulted in, or if repeated is likely to result in, ‘[h]arm to the public service.’” [Citation.]” (*Id.* at pp. 1652-1653.)

III. CPC’S DECISION TO DISMISS

At the outset, we note the only issue before this court is whether Boykin’s conduct warranted dismissal. In granting her petition for writ of administrative mandamus, the trial court stated: “[I]n weighing all of the factors when reviewing the record when—in consideration of the additional personal circumstances, the penalty that is associated with the termination which will carry with her for the rest of her life, in using the language in the *B[u]rman* case at page 219 that states as follows: ‘Although there’s some—there is cause for some discipline existed, the harsh sanction of dismissal was not warranted.’ And that’s what I believe we have here, that there was some cause for discipline[;] however, that harsh sanction of dismissal was not warranted and was much too—too serious for the circumstances that we had here.” Like the CPC, the trial court concluded the evidence showed that Boykin’s conduct in the classroom constituted unprofessional conduct, evident unfitness for service, and unsatisfactory performance.⁷ However, unlike the CPC, the trial court concluded that dismissal was too harsh and thus unwarranted. We disagree.

Based on the record before this court, we find no abuse of discretion in the CPC’s decision to dismiss Boykin on grounds of unprofessional conduct, evident unfitness for service, and unsatisfactory performance. We do not, nor should not, allow feelings of compassion to supplant the decision of the District and the CPC and/or to legitimize Boykin’s conduct. When presented with opportunities to correct her deficiencies

⁷ Boykin has not appealed from that conclusion, and the District agrees with it.

regarding her fitness to teach at the Center, she failed, or was unable, to implement the necessary corrections. When offered to return to the traditional school setting, she refused. Clearly, Boykin sought to impose an all or nothing choice on the District, i.e., either she remain at the Center teaching the students in the same manner that the District found to be unprofessional and unsatisfactory, or she be dismissed.

Following her failure to take advantage of the District's opportunity to improve her teaching style to accommodate the demands at the Center, Boykin left the District with only one option, dismissal. Her conduct had harmed and threatened to harm students. There was no evidence that her conduct would have been any different if she were reemployed. Instead, the evidence suggested otherwise. Over the course of four school years, Boykin repeatedly behaved and performed poorly despite receiving counseling from the District regarding her inappropriate behavior and directives for improvement. The CPC conducted its hearing and concluded that a preponderance of the evidence established cause to dismiss her. (Ed. Code, § 44932, subds. (a)(1), (4), & (5).) Such conclusion was not arbitrary or capricious but was based on Boykin's repeated failures and harm she had caused.

The CPC is a "legislatively mandated professional body, with experience and expertise in the area of determining fitness to teach." (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1982) 135 Cal.App.3d 278, 288.) As the District points out, "[t]eachers, particularly in the light of their professional expertise, will normally be able to determine what kind of conduct indicates unfitness to teach." (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 233, fn. omitted.) The CPC

is comprised of two teachers possessing valid credentials and similar experience as that of the accused teacher. (Ed. Code, § 44944, subd. (c).) As a result of its inherent expertise, the CPC's decision is entitled to great deference. (*San Dieguito Union High School Dist. v. Commission on Professional Competence*, *supra*, at p. 288.)

Here, the trial court relied on the *Burman* case in deciding to overturn the CPC's decision to dismiss Boykin; however, the facts in *Burman* are distinguishable from the facts before this court. In *Burman*, a teacher called in sick to watch the space shuttle land. When asked about her whereabouts on the day in question, she lied to school district officials. (*Burman*, *supra*, 45 Cal.3d at pp. 212-213.) The school district moved to dismiss her on the basis of immoral conduct, dishonesty, evident unfitness for service and persistent violation of or refusal to obey district regulations. (*Ibid.*; fn. omitted.) While finding that the teacher had engaged in dishonesty, the CPC concluded that “the penalty of dismissal should not be imposed,” because the teacher had an “unblemished record,” and her actions “represented isolated conduct . . . not likely of repetition under any set of circumstances in the future.” (*Id.* at p. 214, fn. omitted.) Here, Boykin did not have an “unblemished record,” and the evidence showed that her actions were “likely of repetition.” (*Ibid.*) The District's decision to dismiss her was not as a result of one incident, but after four years of misconduct and poor performance.

For the above reasons, we conclude the trial court erred in reversing the decision of the CPC. The record contains substantial evidence to support its decision, and the CPC did not abuse its discretion in determining that dismissal was appropriate.

VI. DISPOSITION

The judgment is reversed, and the trial court is directed to enter judgment denying the petition for a writ of administrative mandamus. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

RICHLI

J.